

**ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD
MINUTES OF MEETING HELD NOVEMBER 20, 2002
PHOENIX, ARIZONA**

A public meeting of the Arizona Peace Officer Standards and Training Board was convened on November 20, 2002, at AZ POST, 2643 E. University Drive, Phoenix, AZ.

Members Present:

Chairman James Garcia
Mr. Robert Forry, representing Acting Director Charles Ryan
Dr. Michael Polakowski
Sheriff Gary Butler
Chief Jerry Sheridan
Chief Harold Hurtt
Ms. Laura Reckart, representing Attorney General Napolitano
Lt. Colonel David Felix, representing Director Garrett
Sgt. Gary Eisenga

Members Absent:

Attorney General Janet Napolitano
Director Dennis Garrett
Acting Director Charles Ryan
Sheriff Clarence Dupnik
Ms. Lisa Flores
Chief John Corder

Staff in Attendance:

Tom Hammarstrom
Lyle Mann
Gary Maschner
Steve Jacobs
Ted Brandon
Julie Love
Carol Muskus
Lois Sherlock

Counsel for Board in Attendance:

Diana Stabler, Asst. A.G.

Guests in Attendance:

Daniel Christl, Assistant Attorney General

Jan Madeya, ACIP
Scott Mascher, NARTA/YCSO
Bryan Chinarian
Joe Capelli, NARTA
Denis Fitzgibbons, Attorney
Robert Ellis, Prescott P.D.
Jim Zieler, St. Johns P.D.
Frank L. Montoya, Greenlee County S.O.
Richard Doyens, Greenlee County S.O.
Guy Phillips, Hayden P.D.
Jose Vasquez, Hayden P.D.
Dean Burrow, Yuma P.D.
Rich Kush, AZRCPI
Brian Hough, Apache County S.O.
Jack Rose
Jan Cross
Bobby Harris, Chandler P.D.
Eric Hailey, Phoenix P.D./ALEA
Brian R. Hounshell, Apache County S.O.
Abe Hunt, Apache County S.O.
Andrew Tafoya, Apache County S.O.
Clifford A. Thorn, Apache County S.O.
Bill Richards, SALETC
George White, SALETC
Frank Valentine, Sahuarita P.D.
Valerie Bribiescas, Salt River P.D.
Charles Loftus, ASU P.D.
Colleen Abendano, Apache Junction P.D.
Robert Gant, P.C.S.O.
Matt Hedrick, Salt River P.D.
Sandy Schiager
Judith Abramsohn, Attorney
Patee McCormack, Scottsdale P.D.
Mike Snader, Scottsdale P.D.
James Palmer, Coolidge, P.D.
Mary O'Grady, A.G.'s Office
Robert Warner, Apache Junction P.D.

A. CALL TO ORDER

Chairman Garcia called the meeting to order at 1:30 p.m.

B. INTRODUCTIONS

Tom Hammarstrom presented Mrs. Jan Cross and Dr. Jack Rose with plaques in appreciation for their outstanding service to the Arizona law enforcement community while serving as members of the Arizona Peace Officer Standards and Training Board.

C. CONSENT AGENDA

Approved unanimously, motion made by Chief Sheridan, seconded by Chief Hurtt.

1. Minutes of the meeting held on September 25, 2002, were approved as written.

2. Income and Expense Statement – September 2002

Funds as of May 1, 2002	\$ 944, 763.06
CJEF Revenue	430,674.33
Expenditures/Encumbrances	(476,780.02)
Balance for May 31, 2002	\$ 898,657.37

3. 2003 Board Meeting Schedule

JANUARY	Wednesday the 15 th at AZ POST Charging Board Meeting: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30 p.m.
FEBRUARY	Wednesday the 19 th at AZ POST Charging Board Meeting: 10:00 a.m.
MARCH	Wednesday the 19 th in Sierra Vista at the Windemere Hotel Charging Board Meeting: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30 p.m.
APRIL	Wednesday the 16 th at AZ POST Charging Board Meeting: 10:00 a.m.
MAY	Wednesday the 21 st at AZ POST Charging Board Meeting: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30 p.m.
JUNE	Wednesday the 25 th at AZ POST Charging Board Meeting: 10:00 a.m.

JULY	Wednesday the 16 th in Flagstaff at Little America Hotel Charging Board: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30 p.m.
AUGUST	Wednesday the 20 th at AZ POST Charging Board Meeting: 10:00 a.m.
SEPTEMBER	Wednesday the 17 th at AZ POST Charging Board Meeting: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30 p.m.
OCTOBER	Wednesday the 15 th at AZ POST Charging Board Meeting: 10:00 a.m.
NOVEMBER	Wednesday the 19 th at AZ POST Charging Board Meeting: 10:00 a.m. Executive Meeting: 1:00 p.m. Regular Meeting: 1:30
DECEMBER	Wednesday the 17 th at AZ POST Charging Board Meeting: 10:00 a.m.

4. The next scheduled Executive Session in accordance with A.R.S. §38-431.03(A)(1), (A)(2), (A)(3) or (A)(4) is Wednesday, January 15, 2003, 1:00 p.m. at AZ POST, 2643 E. University Drive, Phoenix, AZ.
5. The next scheduled Regular Meeting is Wednesday, January 15, 2003, 1:30 p.m. at AZ POST, 2643 E. University Drive, Phoenix, AZ.
6. Ministerial Actions.
 - a. Certification Waivers: The following individual(s) have met the requirements set forth in AZ POST Rule R13-4-110 and have successfully completed the testing process and verification by AZ POST staff. Therefore, upon Board direction, certified peace officer status has been granted to:

Jessica L. LeBlanc
Joseph Lestinsky Jr.
Scott Dersa
Kenneth S. Lugo
Fred J. Barlow
Edward J. Dobbertin, Jr.
Charley R. Graham

Ak Chin Tribal Police
AZ Dept. of Revenue
AZ State University DPS
Benson Police Department
Colorado River Marshal's Ofc
Huachuca City Police Dept.
Maricopa County Attorney's Ofc

Danny W. Wilkinson
Joe Delgado
Tony C. Martineau
Jeffrey D. Gentry

Maricopa County Attorney's Ofc
Maricopa County Comm. Col. Dist.
Maricopa County Constable's Office
Maricopa County Sheriff's Office

- b. Instructor Certification Renewals: LIST ATTACHED TO MINUTES.
- c. Training Program Approvals: Agency requests were reviewed by staff and found to comply with Board guidelines. Programs were approved as requested. LIST ATTACHED TO MINUTES.
- d. Decertification Case Status Report Updates: As of November 6, 2002, the Certifications and Standards Unit had 97 active decertification cases in various stages of the process. Ten cases are ready for initial presentation, 39 cases require further investigation, 8 cases are pending service of or response to a Notice of Complaint or Decision, 5 cases are pending hearing, 12 cases are ready for final action, and 23 cases are waiting for outside action, i.e., a criminal trial or civil service hearing.

D. REGULAR AGENDA

1. Petition under the AZ POST Drug Experimentation Rule by the Apache Junction Police Department for Applicant Colleen E. Abendano, Case No. 02-108C. The Apache Junction Police Department has petitioned the Board for a determination that the marijuana usage by Colleen Abendano was experimental. Applicant Colleen Abendano, age 41, admits to using marijuana less than 35 times in her life, with the last usage occurring in 1977 at age 16. Her usage exceeds the experimentation rule by 15 uses or less. Numerous factors of the use were considered by the Board. Sgt. Eisenga made a motion to grant the petition for a determination that the pre-employment marijuana usage by Colleen Abendano was experimental, seconded by Ms. Reckart, motion carried unanimously.
2. Limited Correctional Peace Officer (LCPO) Curriculum. The LCPO curriculum has been specifically designed to qualify correctional officers, in designated positions, to perform the duties of an LCPO at their respective institutions. The submitted LCPO curriculum was previously approved by the POST Board and used by the ADC from 1995 to 1998. This same curriculum will again be offered at the Correctional Officer Training Academy (COTA) and it will be facilitated by in-house, certified law enforcement officers who are AZ POST approved instructors. Chief Hurtt made a motion to accept the Arizona Department of Corrections request for approval

of their LCPO curriculum, seconded by Chief Sheridan, motion carried unanimously.

E. REPORTS

1. AZ POST

Tom Hammarstrom announced that Mr. Jim Garcia has been appointed Chairman of the AZ POST Board and will be serving for the next 12 months.

Tom reported that everyone is closely watching the state budget and the AZ POST budget. The Governor has called for a special session of the Legislature to consider how to handle the budget shortfall. The special session may convene as soon as next week. Among the considerations is what to do about agencies like POST, which are not appropriated through appropriated funds but are funded through special funds, such as the Peace Officers Training Funds (POTF) or the Criminal Justice Enhancement Fund (CJEF).

The latest information is that a 10% cut in our annual budget will be recommended and will be accomplished through a “sweep” of funds. AZ POST is an agency that is able to maintain a balance; we can carry a balance from one fiscal year to another fiscal year. Ten percent of our annual earnings are being calculated at \$548,000, and that is the amount we can expect to have to contribute to the budget shortfall problem in the event the special session approves the recommendations. We do not have the opportunity to address the Legislature; our input is not being solicited. We have made contingency plans if we are swept by this amount of money. There are some special projects that the Board had agreed to fund in the 2003 fiscal year budget that will not be accomplished.

The first project that would be cut is the task analysis validation review. POST solicited a request for proposal for the purpose of reviewing the processes that Arizona POST has used over the last 10 years since our basic job task analysis was performed to understand whether or not our process over the last 10 years has resulted in a continuing and valid basic course. It is a training application and a technical consulting role. The amount budgeted for that project was up to \$200,000. We have received bids ranging between \$40,000 and \$80,000 for the performance of that work. We will not let that bid in anticipation of this shortfall.

POST placed \$275,000 in an account for allocation funding, which is a fund available to each agency head for the purpose of reimbursement

for training. This is one area where we may have to make up part of the shortfall.

Additionally, there has been a hiring freeze in state government. POST has honored that freeze, but solicited one emergency hiring request, and we were allowed to fill one of our clerical positions. POST has four vacant positions, and those vacancies have resulted in substantial personnel savings which will contribute to our ability to make up this shortfall.

2. BASIC TRAINING

Lynn Larson reported that at the last Board meeting, the Board granted a waiver for a Police Corps cadet who had gone to Oklahoma for training. He completed the waiver test on November 6, 2002. He scored an average of 88.71%. The Flagstaff Police Department and Director Heiden of Police Corps are very pleased with the first trial candidate.

Chief Hurtt asked Mr. Larson if any of the academies will be affected by the shortfall in the state budget. Mr. Larson stated that in his conversations with the academy commanders they had not mentioned any immediate adverse impact regarding the shortfall. Mr. Hammarstrom stated the highest training priority is basic training and basic training would be the last that would be impacted.

3. POLICE CORPS

Lyle Mann stated that the first graduate is serving the city of Flagstaff, and they are very pleased with his performance. A number of federal agencies have suffered reductions. One of the changes that will be made is they will no longer support agencies on an annual basis who hire Police Corps graduates, and that will have some impact on who hires the graduates. We still are moving forward with the budget that carries us through January 31st, which is for selection and recruitment for people to be sent to Utah for training. They are hoping that the Arizona program will go forward to September 30, 2003. At this point, there are budget issues with Police Corps. Director Heiden is working hard with the senators to try and deal with that, but it is uncertain as to what is going to happen with Police Corps.

4. ARIZONA DEPARTMENT OF CORRECTIONS

Mr. Forry announced that Director Terry Stewart has retired from the Department of Corrections, and Governor Hull has appointed Mr. Charles Ryan as Acting Director.

5 ARIZONA REGIONAL COMMUNITY POLICING INSTITUTE.

Director Kush announced that the Institute is funded for another year. They are regionalizing their training state wide to try and stretch the dollars. A regional training calendar will be completed for calendar year 2003.

6. ADVISORY COMMITTEE REPORTS

Tom Hammarstrom reported that with the Board's direction to implement policy on committee and working groups, staff will be bringing to the Board recommendations regarding membership on committees within the next several months.

F. CASES: Consideration and possible action on the certified status of peace officers.

Case #1 – John B. Abney – Mesa Police Department. The Board considered comments by Mr. Kent Komadina, attorney for Mr. Abney. The Board considered the Consent Agreement, Order and Decision (voluntary relinquishment of peace officer certification). Chief Sheridan made a motion to adopt the Consent Agreement, Order and Decision, seconded by Ms. Reckart, motion carried unanimously.

Case #2 – William K. Bailey – Yavapai County Sheriff's Office. The Board considered the Consent Agreement, Order and Decision (voluntary relinquishment of peace officer certification). Sgt. Eisenga made a motion to adopt the Consent Agreement, Order and Decision, seconded by Chief Hurtt, motion carried unanimously.

Case #3 – Steven R. Cervantes – Tombstone Marshal's Office. The Board considered the documentation regarding violations of R13-4-105(A)(6), R13-4-109(A)(1)(6) and (8). Chief Hurtt made a motion to adopt the Findings of Fact and Conclusions of Law and deny peace officer certification, seconded by Chief Sheridan, motion carried unanimously.

Case #4 – Bryan Chinarian – Colorado River Indian Tribal Police Department – The Board considered comments from Mr. Chinarian, and Mr. Dan Christl, A.G's Office. The Board considered documentation regarding violations of R13-4-109(A)(6)(7) and (8). Mr. Forry made a motion to adopt the Findings of Fact and

Conclusions of Law, seconded by Chief Sheridan, motion carried unanimously. Chief Sheridan made a motion to take no action, seconded by Sheriff Butler. Motion failed with 3 yeas and 4 nays. Mr. Forry made a motion to suspend peace officer certification for one year from termination (November 13, 2001 to November 13, 2002), seconded by Sgt. Eisenga, motion carried with 2 nays.

Case #5 – Michael V. Cirivello – Apache County Sheriff's Office – The Board considered comments from Mr. Cirivello, Sheriff Brian Hounshell, Commander Brian Hough, and Diana Stabler, A.G's Office. Because there had been ex parte communications, Mr. Garcia read the following into the record: In the interests of full disclosure and to honor the public meeting law, I need to state the following for the record: Several of the Board members have brought to my attention that Sheriff Hounshell or a staff member called them or their offices and expressed support for Mr. Cirivello. Each of the Board members avows that nothing about the phone calls had an effect on the way they view the evidence before them.

The Board considered documentation regarding violations of R-13-4-109(A)(6)(7) and (8). Mr. Forry made a motion to direct the parties to negotiate a suspension because of the following factors: the scanner Officer Cirivello was accused of stealing was found property, his keeping of it was self-reported, there was no way anyone would have known about it except for the self-reporting, it took place seven years ago, he is supported wholeheartedly by his department, and it was used only for department use and not personal use. Sheriff Butler seconded the motion stating, "No one showed me a victim, no one showed me there was a crime, no one showed me there was any personal gain, no one showed me any criminal charges being filed or anyone considering criminal charges. As far as I'm concerned, I find no crime here. I find an officer who did not use good judgment. I recommend a three-month suspension of peace officer certification based on the fact that he didn't bring it forth to his agency when he found this and did not follow procedure."

Diana Stabler pointed out that the motion and the second were two different directions. Sheriff Butler's motion would be to adopt the Findings of Fact, to reject Conclusions of Law (A)(6) that the officer committed a crime, to adopt the Conclusions of Law (A)(7) and (A)(8) that his conduct was malfeasance for failure to follow the proper procedure with evidence or found property, and then converting that to department use. Mr. Forry withdrew his original motion. Sheriff Butler made a motion to find that in 1995 Michael Cirivello failed to abide by evidence and found property policies of his department, and converted property to department use in violation of POST Rules R13-4-109(A)(7) and (8), and to suspend his certification for a period of three months from today's date (November 20, 2002). Motion seconded by Chief Sheridan, motion carried with 5 yeas and 4 nays.

The Board took a break at 3:15 p.m. Meeting convened at 3:25 p.m.

Case #9, Case #6, and Case #12 were taken out of order because there were people waiting to speak before the Board.

Case #9 – Matthew Hedrick – Salt River Tribal Police Department – The Board heard comments from Mr. Hedrick, Judith Abramsohn, attorney for Mr. Hedrick, Mary O’Grady, Solicitor General’s Office, Lt. Valerie Bribiescas, and Dan Christl from the A.G.’s Office. The Board considered documentation regarding violations R13-4-109(A)(6)(7) and (8). Dr. Polakowski made a motion to deny a rehearing, seconded by Ms. Reckart, motion carried unanimously. Ms. Reckart made the motion to adopt the Findings of Fact as follows: “I move to adopt the Findings of Fact as they are and to adopt the Conclusions of Law with the clerical errors being amended, being on Page 21, Line 17 ½, in the caption should reflect 109(A)(7), and on Page 22 amend the clerical errors being on Line 10, Line 27 and Line 28 changing (A)(9) to (A)(8).” The Motion was seconded by Chief Hurtt, motion carried with one nay. Chief Sheridan made a motion to suspend peace officer certification for 120 days retroactive from October 13, 2001, to February 14, 2002, seconded by Dr. Polakowski, motion carried unanimously.

Case #6 – Robert R. Gant – Pinal County Sheriff’s Office – The Board considered comments from Mr. Denis Fitzgibbons, attorney for Mr. Gant, and Mr. Dan Christl, A.G.’s Office. The Board considered documentation regarding the Consent Agreement, Order and Decision. Ms. Reckart made a motion to adopt the Findings of Fact and Conclusions of Law and suspend peace officer certification from February 9, 2002 to July 10, 2002, seconded by Sheriff Butler, motion carried unanimously.

Case #12 – Sandra A. Schiager – Scottsdale Police Department – The Board considered comments from Ms. Schiager, Patee McCormack, Mike Snader, and Ms. Diana Stabler, A.G.’s Office. Chief Sheridan made a motion to agree to the stipulation and adopt the Findings of Fact and Conclusions of Law, seconded by Sgt. Eisenga, motion carried unanimously. Chief Sheridan made a motion to suspend peace officer certification for a period of one year beginning May 30, 2002, seconded by Ms. Reckart, motion carried unanimously.

Case #7 – Ronald E. Gates – Navajo County Sheriff’s Office – Sheriff Butler recused himself from participation and voting on this matter. The Board considered documentation regarding the Consent Agreement, Order and Decision (voluntary relinquishment of certification). Ms. Reckart made a motion to adopt the Consent Agreement, Order and Decision, seconded by Sgt. Eisenga, motion carried unanimously.

Case #8 – Patrick J. Hall – Coolidge Police Department – The Board considered documentation regarding the Consent Agreement, Order and Decision (voluntary relinquishment of certification). Ms. Reckart made a motion to adopt the Consent Agreement, Order and Decision, seconded by Sgt. Eisenga, motion carried unanimously.

Case #10 – Albert E. Lizarraga – AZ Department of Transportation, Motor Vehicle Division – The Board considered documentation regarding violations of R13-4-109(A)(6)(7) and (8). Ms. Reckart made a motion to adopt the Findings of Fact and Conclusions of Law and revoke peace officer certification, seconded by Chief Sheridan, motion carried unanimously.

Case #11 – Sidney Sahneyah II – Hopi Resource Enforcement – The Board considered documentation regarding violations of R13-4-105(A)(9) and R13-4-109(A)(1)(6) and (8). Chief Sheridan made a motion to adopt the Findings of Fact and Conclusions of Law and deny peace officer certification, seconded by Mr. Forry, motion carried unanimously.

G. CALL TO THE PUBLIC

None received.

H. ADJOURN

Chairman Garcia adjourned the meeting at 5:15 p.m.

Dated – November 22, 2002

Lois Sherlock, Recording Secretary

MINUTES APPROVED:

1. _____

8. _____

2. _____

9. _____

3. _____

10. _____

4. _____

11. _____

5. _____

12. _____

6. _____

13. _____

7. _____